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NOTES OF CASES.

Automobile Insurance—Recovery of Car as Affecting Policy Covering Theft.—In *O'Connor v. Maryland Motor Car Ins. Co.*, 287 Ill. 204, 122 N. E. 489, 3 A. L. R. 787, it was held that under policy covering theft of an automobile, making loss thereunder payable 60 days after notice and proof of loss, and providing that there could be no abandonment to the company, where the automobile insured was recovered after 60 days, the insurer was nevertheless liable for its full value, without reference to abandonment.

The court said: "There can be no question that the liability of the company might be affected by the return of the automobile and the giving of the required notice before the expiration of the 60 days; but we are disposed to hold that if, after the notice and satisfactory proof of loss were given, 60 days had expired before the finding and return of the automobile, the policy intended that there might be full recovery from the company for the value of the automobile, and this without reference to the question of abandonment. As we construe this policy as to loss by theft, the term 'abandonment,' as used in the quoted provision, was intended to mean that there could be no voluntary abandonment (using the word in the technical sense) by the owner before the expiration of the 60 days.

"Counsel for appellant cite and rely on a number of English cases which seem to hold that the subsequent recovery of a captured ship prevents the owner from being entitled to the insurance as for a total loss, even if such recovery is after the insured has abandoned his interest to the underwriters. Counsel for appellee, on the other hand, argue that the English doctrine on this question has not been followed in this country, and that many of our courts have expressly stated they do not agree with the English doctrine. Counsel cite and rely in this regard on *Norton v. Lexington Ins. Co.*, 16 Ill. 235, and also *Bradlie v. Maryland Ins. Co.*, 12 Pet. 378, 9 L. Ed. 1123. All of the English and American cases cited have reference to maritime insurance—a branch of the law having well-understood customs and rules, distinct, in some respects, from those relating to other classes of property—and can only be applicable, by analogy, to the case at bar. In view of the construction that we have given to the provisions of this policy, we do not deem it necessary to refer to these decisions, except to say that we agree with counsel for appellee that the decisions in this country and especially *Norton v. Lexington Ins. Co.*, *supra*, decided by this court, are not in accord with the reasoning of the English cases.

"This suit was instituted after the lapse of sixty days from the notice and proof of loss, but after the automobile had been found. Counsel for appellant seem to concede that, if the suit had been

instituted before the automobile had been found, under the reasoning of the English cases appellee could have recovered for the full amount of the machine; that is, that the date of the starting of the suit fixed the time of recovery for a total loss, if the machine had not been found before that date. Obviously, in order to make an insurance policy of this kind of value to the owner of the property, there must be some time fixed after which the return of the automobile will not release the company from liability. Automobiles are so generally used in business affairs and other activities of life that public policy requires that a person having a theft policy should not be compelled to wait indefinitely on the chance of having the stolen automobile recovered, or be compelled to incur the expense of buying a new one and thereafter taking the old one back, if recovered. Fairly construed, we think this insurance policy intended to fix the date at sixty days after the notice and satisfactory proof of loss had been received by the company,—in other words, to fix the date at which the insured would not be compelled to take the stolen car back, even if recovered, at the date when the insurance money was agreed to be paid.”

Bills and Notes—Want of Consideration.—In *Dougherty v. Salt*, 125 N. E. 94, the Court of Appeals of New York held that a promissory note, executed and given to a nephew was a gift, is unenforceable.

The court said: “This is a case where the testimony in disproof of value comes from the plaintiff’s own witness, speaking at the plaintiff’s instance. The transaction thus revealed admits of one interpretation, and one only. The note was the voluntary and unenforceable promise of an executive gift. *Harris v. Clark*, 3 N. Y. 93, 51 Am. Dec. 352; *Holmes v. Roper*, 141 N. Y. 64, 66, 36 N. E. 180. This child of 8 was not a creditor, nor dealt with as one. The aunt was not paying a debt. She was conferring a bounty. *Fink v. Cox*, 18 Johns. 145, 9 Am. Dec. 191. The promise was neither offered nor accepted with any other purpose. ‘Nothing is consideration that is not regarded as such by both parties.’ *Philpot v. Gruninger*, 14 Wall. 570, 577 [20 L. ed. 743]; *Fire Ins. Ass’n v. Wickham*, 141 U. S. 564, 579, 12 Sup. Ct. 84, 35 L. ed. 860; *Wisconsin & M. Ry. Co. v. Powers*, 191 U. S. 379, 386, 24 Sup. Ct. 107, 48 Ld. ed. 229; *De Cicco v. Schweizer*, 221 N. Y. 431, 438, 117 N. E. 807, L. R. A. 1918E 1004, Ann. Cas. 1918C 816. A note so given is not made for ‘value received,’ however its maker may have labeled it. The formula of the printed blank becomes, in the light of the conceded facts, a mere erroneous conclusion, which cannot overcome the inconsistent conclusion of the law. *Blanshan v. Russell*, 32 App. Div. 103, 52 N. Y. Supp. 963, affirmed on opinion below 161 N. Y. 629,